

Serial No.---- 10/542,557

- 5 -

**REMARKS**

Claims 1-17 and 21-23 are pending.

Claims 18-20 have been canceled.

Claims 1 and 21 are amended to delete the phrases "(in particular)" and "(as in claim 1)", as well as to clarify that the air channel 25 terminates in a wider portion in the tread area and that the climate channels extend outwardly from and communicate with the wider portion of the air channel, as shown in Figures 1 and 8-10 (see also paragraph 29). Claims 6, 15-17 and 23 have been amended for clarity to specify that the climate channels have an essentially circular cross-section, but for a gap in the circular cross-section that can close to form a closed circle under load, thus facilitating air flow in the channels (see e.g., Figure 6 and paragraph 0031). No new matter is added by these amendments.

**Claim Objections.**

Claims 1 and 21 are objected to for including the phrases "(in particular)" and "(as in claim 1)", respectively. In response, these phrases have been deleted.

**Objections to the Drawings.**

The drawings have been objected to because they allegedly do not show all of the features of the claims. In particular, the Office Action alleges that the air channel located in the tread area in the sole along with the climate channel and central channel of claims 1 and 7 and 21-23 are not shown. Applicants do not understand the basis for this objection. First, claim 1 does not recite a central channel. Second, the connection between the air channel 25 and the climate channels 26 in the tread area of the soc, as set forth in claim 1, is shown in Figures 8, 9 and 10. The arrangement of climate channels 26 in conjunction with a central channel 262 is found in Figure 7. Consequently, the drawings appear to show all of the claimed features. Clarification as to just

Serial No.---- 10/542,557

- 6 -

what is missing from the drawings is respectfully requested.

**Rejections under 35 U.S.C. 112.**

Claims 1, 7, and 21-23 are rejected as allegedly failing to comply with the written description requirement. The Office Action asserts that there is no support for the air channels being located in the sole of the sock along with the climate channels and the central channel. As noted above, claim 1 does not recite a central channel. In addition, Figures 8, 9, and 10 each show an air channel 25 connected to climate channels 26 on the sole of the sock. Figure 1 shows that the air channel 25 extends along the vertical length of the sock from the region near the top band of the sock, eventually curving around into a wider area in the tread area in the sole (see also paragraph 0029). Thus, there is disclosure of the air channels and climate channels on the sole.

Claims 7 and 21-23 recite a central channel 262 connected to climate channels 26. This is schematically illustrated in Figure 7. While Figure 7 does not explicitly also show the air channel 25, one of ordinary skill in the art would recognize the presence of the air channels 25 extending into the tread area in all embodiments of the claimed socks due to the side view shown in Figure 1, showing the lower end of air channel 25 curving under the arch of the sock and into the bottom (sole) tread area of the sock. Paragraphs 0025 through 0030 indicate that an exemplary embodiment is shown in Figure 1, and that "air channel 25 extends from band 21 into the tread area 13" (paragraph 0029). Figures 2, 3, 5, and 7 schematically show the bottoms of various sock embodiments to illustrate different arrangements or configurations of climate channels 26 and an optional central channel 262. Again, one of ordinary skill in the art would readily understand that in all cases at least one air channel also encroaches into the tread area in the sole based on the discussion of Figure 1 (e.g., paragraph 0029 and the illustrations in Figures

Serial No.---- 10/542,557

- 7 -

8-10). Accordingly there is support for the climate channel 25 being present in the sole of the sock.

**Anticipation Rejections.**

Claims 1, 2, and 9-12 are rejected as allegedly being anticipated by Lambertz (US 6,286,151). This rejection is unwarranted.

"Anticipation" means that the subject matter of the claims on appeal was previously known and was described in a printed publication, either explicitly or inherently. *Abbott Laboratories v. Sandoz, Inc.*, 89 U.S.P.Q.2d 1161, 1166 (Fed. Cir. 2008). Anticipation is established by documentary evidence, and requires that every claim element and limitation is set forth in a single prior art reference, in the same form and order as in the claim. *Abbott Laboratories*, 89 U.S.P.Q.2d at 1166. Additionally, an anticipating reference must enable that which it is asserted to anticipate. *Seymour v. Osborne*, 78 U.S. 516, 555 (1870). To anticipate, the claimed subject matter must not only be previously known, but the knowledge must be sufficiently enabling to place the information in the possession of the public. *Elan Pharmaceuticals, Inc. v. Mayo Foundation*, 346 F.3d 1051, 1054 (Fed. Cir. 2003). None of the anticipation rejections in this case satisfy the foregoing requirements.

The present claims are directed to socks for use in athletic activities having a foot portion 1 and a shaft portion 2, the foot portion having a toe area 11, a heel area 12, and a tread area 13 between the toe area and the heel area. An air channel 25 extends from the shaft portion 2 and terminating in a wider portion in the tread area 13. At least one climate channel 26 extends outwardly from the wider portion of the air channel in the tread area 13, and communicates with the air channel 25, for removing moisture from the tread area when the sock is worn for athletic activities.

Serial No.---- 10/542,557

- 8 -

A close examination of the Lambertz patent reveals a climate-adjusting sock which has an air channel 3 proceeding from the sole 2 of the foot up to the band 4 and which is formed of climate-adjusting net-type knit fabric (col. 2, lines 35-42). In the interior, the sock 1 is provided with a padded instep cushion or padding 5, which can be ribbed, and in the area of the shin it is provided with a padded shin cushion 6 (col. 2, lines 45-50). The area of the Achilles tendon is protected by means of padded cushions 7 (col. 2, lines 54, 55). The area of the calf is also provided with padded cushions whereby, in the example shown, rod-type paddings 8 are provided (col. 2, lines 62-64). The sock is also provided with an X-cross support band (col. 3, lines 1-3). The sole 2 of the sock 1 is equipped with additional padded cushions or paddings 10 and 11, particularly, in the area of the ball of the foot and/or in the area of the toes (col. 3, lines 6-10). Please note that paddings 10 and 11 are not channels. Additional support bands may be arranged in the area of the ankle, namely, a ring-type support band 12 above the ankle and below that, an additional support band 13. It is possible to provide another diagonal support band 14 (col. 3, lines 28-32). Please note that the bands 13 and 14 are not channels, either.

With respect to the rejection over Lambertz the Office Action does not appear to recognize that air channel 25 is a separate and distinct feature from climate channels 26 in the present claims. Lambertz discloses only air channels, but not climate channels extending outward from the air channel in the tread area of the sock, as claimed. In order to clarify the differences between climate channels 26 and air channel 25, claims 1 and 12 have been amended to recite that the climate channels 26 terminate in a wider portion in the tread area and that the climate channels extend outwardly from the wider portion of the air channel. Lambertz does not disclose separate and distinct climate channels extending outward from the air channel in the tread region of the sock. Lambertz does not even show a bottom view of the socks described

Serial No.---- 10/542,557

- 9 -

therein (all of the views are from the side). Consequently, this rejection should be withdrawn, since Lambertz does not disclose all of the features of the claimed socks.

Claims 1-8, 12-17, and 21-23 are rejected as allegedly being anticipated by Ogden (US 5,708,985). This rejection is unwarranted as well.

Ogden relates to a sock having a sole portion designed to enhance the frictional engagement with the skin of the planter surface of the foot (column 1 lines 6 to 8). The sock 10 has a sole portion 24 knitted with successive courses of yarn with a thickness defining an outer layer having an inner surface and which further includes a number of space ribs extending in a longitudinal direction between the heel and toe each formed by knitting a selected number of additional courses of yarn which extend from the inner surface of the outer layer in a direction toward the instep portion of the sock in a position to contact the planter surface of the foot (column 2 line 63 to column 3 line 5). The sock 10 comprises a leg portion 12 and a foot portion 14. The foot portion 14 has a heel 16 at one end, preferably including a heel pocket 18, and a toe 20 at the opposite end. Extending between the heel 16 and toe 20 are an instep portion 22 engageable with the upper half of the foot, and a sole portion 24 engageable with the bottom half of the foot.

The instep portion 22 and sole portion 24 of the Ogden sock have opposed sides which are joined together along their edges to form the completed foot portion 14 of the sock 10 (column 4 line 38 to 48). The sole portion 24 of sock 10 further includes a number of longitudinally spaced ribs 36 which extend substantially parallel to one another from approximately the heel 16 to the toe 20 of sock 10 (Figures 2 - 4b). Each of the ribs 36 is defined by at least one additional layer of yarn which is knitted with terry loops 38. The terry loops 38 extend from the inner surface 32 of outer layer 28 inwardly, i.e., within the interior of the sock 10

Serial No.--- 10/542,557

- 10 -

in a direction toward the instep portion 22 thereof. The yarn forming ribs 36 is preferably Cool-Max, or other suitable moisture-wicking yarns, which provide exceptional cushioning and resistance to abrasion in addition to moisture-wicking ability (column 5 line 22 to 37). The spaces between and within the ribs 36 on the sole portion 24 of the sock herein are a sufficient distance apart to cause the skin of the planter surface of the foot to move therein, thus increasing the frictional engagement between (column 3 lines 35 to 39). The longitudinally spaced ribs 36 are preferably formed with a terry stitch of suitable moisture-wicking fiber (column 3 lines 48 to 51). Additionally, the ribs 36 can extend continuously in a traverse direction from one side of the sole portion to the other. Further, one or more ribs 36 could be eliminated entirely, particularly in the arch area of the plantar surface of the foot (column 6 lines 53 to 57).

Comparing the sock of Ogden with the present invention it can be seen that there are no concordances. This is based on the fact that Ogden does not describe an air channel in the shaft of the sock that terminates in a wider portion in the tread area and communicates with climate channels in the tread area that extend outwardly from the wider area of the air channel as claimed in the present application. The Ogden patent shows various ribs 36 in the tread area spaced by gaps 44, but these gaps are not in communication with anything that could be described as an air channel that terminates in a wider portion in the tread area. Similarly, the gaps 44 do not extend outwardly from anything that can be described as an air channel as presently claimed. In addition the Office Action asserts that Ogden discloses a climate channel having a circular cross-section (as in claims 6, 15-17 and 23), citing Figures 2, 3, and 5 for support. That is clearly not the case, however, since Figures 2, 3, and 5 of Ogden show plan views, not cross-sections, much less circular cross-sections of a climate channel. In addition, Ogden does not disclose a climate channel having the essentially circular cross-section with a closable gap as in claims 6, 15-17 and